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June 10, 2015

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation; CG Docket No. 02-278**

Dear Ms. Dortch:

On June 10, 2015, Martha Duggan, Senior Principal, Regulatory Affairs for the National Rural Electric Cooperative Association (“NRECA”) and Tracy Marshall, Partner, Keller and Heckman LLP and counsel to NRECA, met with Nicholas Degani, Legal Advisor, Office of Commissioner Pai. The purpose of the meeting was to discuss Federal Communications Commission (“FCC” or “Commission”) Chairman Wheeler’s proposal to address pending petitions seeking clarity on the Commission’s enforcement of the Telephone Consumer Protection Act (“TCPA”), as reflected in the Fact Sheet circulated on May 27, 2015,<sup>1</sup> as well as comments filed by NRECA in support of a *Petition for Expedited Declaratory Ruling* filed by the American Gas Association and Edison Electric Institute (the “AGA/EEI Petition”) and a *Petition for Declaratory Ruling* filed by the Consumer Bankers Association (the “CBA Petition”) in the above-referenced proceeding.<sup>2</sup>

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<sup>1</sup> *Wheeler Proposal to Protect and Empower Consumers Against Unwanted Robocalls, Texts to Wireless Phones*, Fact Sheet (May 27, 2015).

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Petition for Expedited Declaratory Ruling of the American Gas Association and Edison Electric Institute*, CG Docket No. 02-278 (Feb. 12, 2015); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Petition for Declaratory Ruling of the Consumer Bankers Association*, CG Docket No. 02-278 (Sept. 19, 2014).

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At the outset, NRECA explained that its members include more than 900 rural electric cooperatives located in 47 states, covering 75% of the nation's land mass and serving 12% of the U.S. population. NRECA also explained the unique non-profit member-owned business structure of rural electric cooperatives, and how cooperatives are closely regulated by their member-owners. NRECA further pointed out that the average per capita income of cooperative members is approximately 21% below the national average.

NRECA described how electric cooperatives are creating innovative financing tools to help their members improve efficiency of their electric use for their homes, farms and business. Specifically, NRECA described prepayment programs used by many electric cooperatives that allow customers to pay ahead for electricity. Approximately 135 rural electric cooperatives currently offer prepayment programs. When a customer's balance gets low, it is necessary to communicate that to the customer. That communication may be performed using interactive voice response, email, website, a text message or an in-home display. The prepayment program is beneficial to customers, as it allows them to avoid large deposits for service, provides education as to how and when they use electricity, and serves as an additional notification that payment is owed so that action can be taken to avoid possible disconnection. The programs have been enthusiastically recommended by participants (96% very likely or somewhat likely to recommend prepayment), and participants manage their energy more efficiently, resulting in consumer savings. Cooperatives also benefit from the programs, as they can collect past debt in a convenient and customer-acceptable way, and it serves as a mechanism to avoid new debt, and increases overall customer satisfaction. NRECA provided Mr. Degani with a handout that describes electric cooperative prepayment programs in more detail, a copy of which is enclosed.

The participants discussed instances where NRECA member cooperatives have made prepayment program calls to a wireless number associated with a member-owner that was reassigned to a different subscriber without the caller's knowledge. Some NRECA members have been the target of TCPA litigation on account of such calls to numbers that were reassigned, despite that the caller had prior consent from the original subscriber. Accordingly, in its Comments on the CBA Petition, NRECA urged the Commission to (1) declare that the "called party" for purposes of the TCPA and FCC Rules refers to the intended recipient, not a new subscriber of a number that has been reassigned, and/or (2) provide an exception for calls to reassigned numbers where the caller obtained prior consent, but the number was reassigned without the caller's knowledge.<sup>3</sup> In either event, NRECA acknowledged that the caller should be required to update its records and cease calls to the reassigned wireless number within a reasonable time period after being informed that the number was reassigned.

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<sup>3</sup> Comments of the National Rural Electric Cooperative Association, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Petition for Declaratory Ruling of the Consumer Bankers Association*, CG Docket No. 02-278 (Nov. 17, 2014).

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The participants discussed the practical implications of the Chairman's proposal that, if a phone number has been reassigned, callers must stop robocalls to which the previous subscriber consented after one call. Such a standard must be implemented in a way that allows the caller to know if a number has been reassigned. If no one answers a call, it is impossible for the caller to determine whether the number has been reassigned. It is also not clear how the proposal would apply to text messaging, since recipients of text messages often do not respond to them. While a database of wireless numbers may be available, there is no guarantee that every reassigned number appears in the database. Without clarification, NRECA member coops may be forced to discontinue important informational calls and alerts after one call or else potentially face legal liability, despite having obtained prior consent from the previous subscriber. This cannot be the result that Congress intended when enacting the TCPA, and consumer-friendly communications services should be encouraged, not discouraged.

The Fact Sheet also suggests some limited exceptions to the prior consent requirement for prerecorded voice and/or autodialed calls and texts. The participants discussed NRECA's comments on the AGA/EEI Petition, wherein it urged the Commission to declare that providing a number, in particular a wireless number, to an energy utility constitutes prior express consent to receive non-telemarketing, informational calls and texts at such number that relate to the customer's utility service.<sup>4</sup> Such calls and texts from NRECA members relay important information about planned and unplanned outages, service interruptions and restoration, prepayment programs, account balances, and demand response or energy-efficiency initiatives. Some of these communications may not fall within the "emergency purposes" exception to the TCPA prior express consent requirement, but are nevertheless critical to providing safe, affordable, efficient, and reliable service and meeting the coops' obligations to the communities they serve. These are normal, expected, and desired business communications that Congress contemplated should not be restricted by the TCPA. Without clarification from the Commission, the threat of lawsuits arising out of an electric cooperative's alleged failure to obtain prior express consent decreases the ability of coops to effectively serve their customers and provide them with important, time-sensitive, service-related information that they need and want.

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<sup>4</sup> Comments of the National Rural Electric Cooperative Association, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Petition for Expedited Declaratory Ruling of the American Gas Association and Edison Electric Institute*, CG Docket No. 02-278 (March 26, 2015).

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This notice is being electronically in the above-referenced docket, pursuant to Section 1.1206(b)(2) of the Commission's rules. Please contact me with any questions.

Respectfully submitted,

/s/ Tracy P. Marshall

Tracy P. Marshall  
Counsel to NRECA

Enclosure

cc: Nicholas Degani

# Electric Cooperative Prepayment Programs

*Presented to:*

***Federal Communications Commission***

*Presented by:*

Martha Duggan

Senior Principal, Regulatory Affairs  
National Rural Electric Cooperative Association

June 10, 2015



National Rural Electric  
Cooperative Association  
A Touchstone Energy® Cooperative

# Rural Electric Cooperatives – What We Do

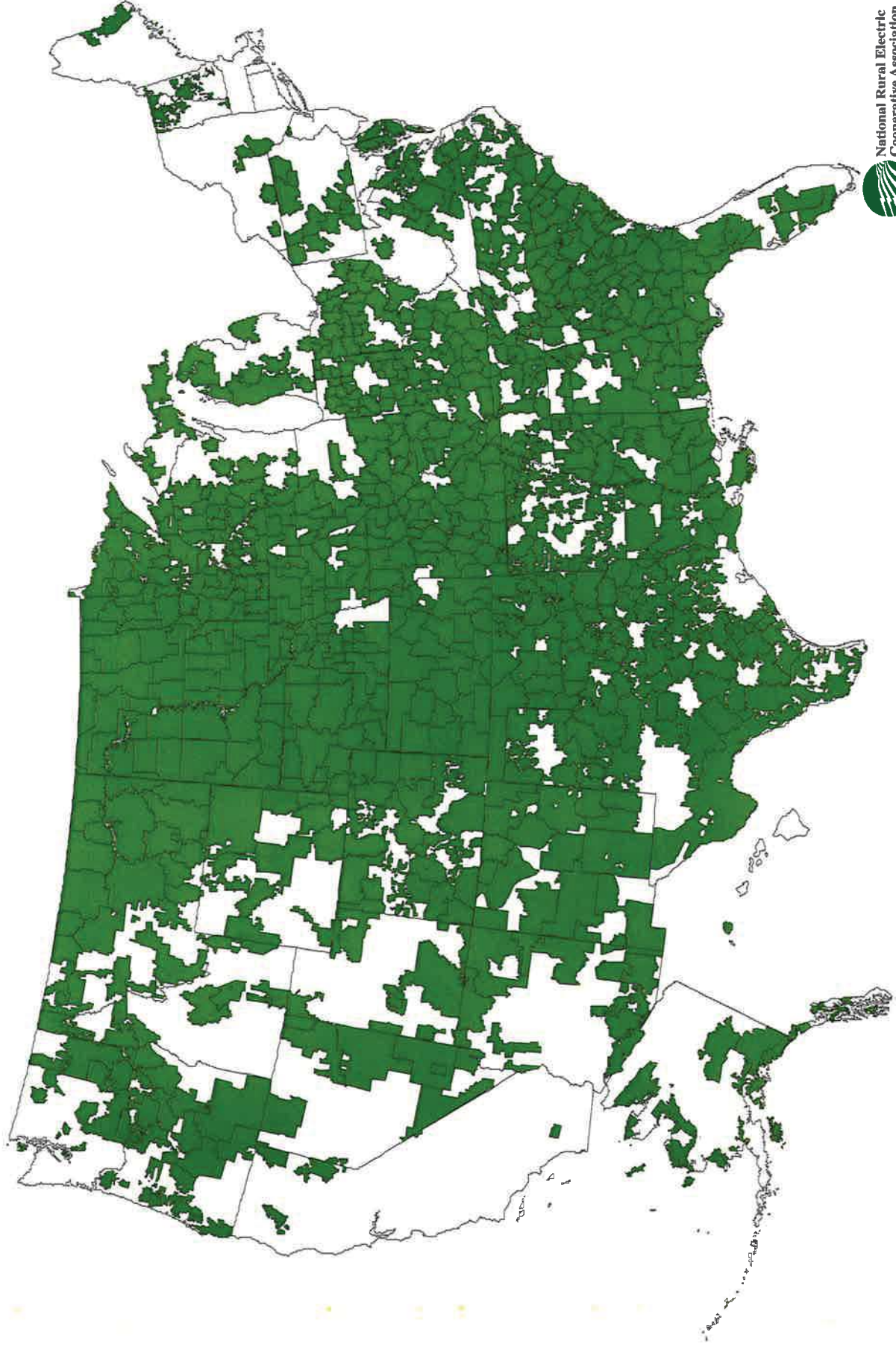
- Our Mission: To Provide Safe, Reliable and Affordable Electric Service to our consumer-owners.
- Electric cooperatives are private, non-profit electric utilities, owned by the members they serve.
- Democratically governed.
- Organized under the Seven Cooperative Principles.
- Anchored firmly in the communities we serve.
- Closely regulated by our consumer-owners.
- Electric cooperatives began to spread across rural America after President Franklin D. Roosevelt created the Rural Electrification Administration (REA) in 1935.

# Rural Electric Cooperatives – By the Numbers

- 930 Consumer-Owned and - Governed Utilities:
  - 864 Electric Distribution Cooperatives
  - 66 Generation & Transmission Cooperatives
- 42 million consumer owners
- 47 States
- 12% of the Population
- 2.3 Million Miles of Line (42% of Nation's Total Distribution Plant)
- Built, Own & Operate 54,000 MW of generation
- Service Area Covers 75% of Nation's Land Mass
- Median Per Capita Income of Co-op Consumers = 21% Below the National Average (or \$21,435)
- Employ 70,000 people in the U.S.
- Pay \$1.4 billion in state and local taxes annually



# Counties in Which Electric Distribution Co-ops Serve





# Rural Electric Cooperatives –

## Governance

- Co-ops put consumers first because the consumers are the owners and co-ops are locally owned and operated.
- Each co-op is governed by a board of directors elected annually from the consumer members who own the co-op.
- Provide at cost electric service.
- Deliver economic benefit to member proportional to their use (capital credits).
- Each year the board analyzes annual performance and weighs the desires of the members vs. the needs of the co-op, and makes a decision about where to put revenue.
- Excess is allocated in the form of capital credits to the members.
- Our more than 900 co-ops retire more than \$545 million in capital credits annually, keeping electric rates lower.
- Consumer members frequently receive a capital credits check from their co-op.

# Rural Electric Cooperatives – Always Improving

- In many instances, electric co-ops are not replacing existing infrastructure but rather making upgrades to the existing grid, adapting and combining new technologies with proven technologies.
- These investments make sense for them and their members; because the technology advancements provide consumer-members with safe, reliable power at the lowest reasonable cost.
- Electric cooperatives continue to show the largest penetration of advanced metering infrastructure: 25 percent, compared with 8.7 percent nationwide.
- Approximately half of all electric cooperatives have installed AMI/advanced meter reading (AMR) technology on part or all their systems.
- Across the country, electric cooperatives are creating innovative financing tools to help members improve the efficiency of their homes, farms and businesses.



# Rural Electric Cooperatives – Prepayment Programs

## How Prepayment Programs Work:

1. A prepayment “engine” (software host system) manages the prepayment accounts.
2. The engine receives or requests periodic meter readings.
3. The engine performs balance calculations based on the readings.
4. Balance information is then provided to the customer, typically using one of the following:
  - a. Interactive Voice Response
  - b. Email
  - c. Website
  - d. Text Message
  - e. In-Home Display

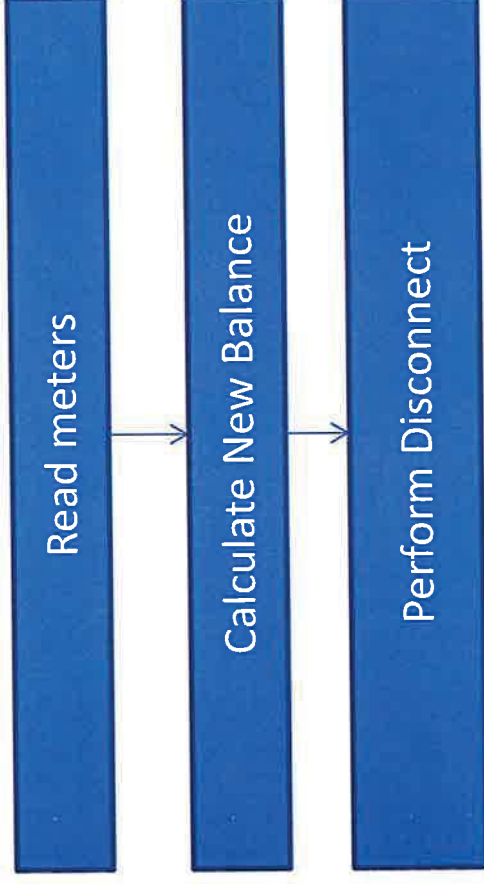
***As Of 2012, 95 rural electric cooperatives offer Prepayment programs in  
24 states.***

# Rural Electric Cooperatives – Prepayment Programs

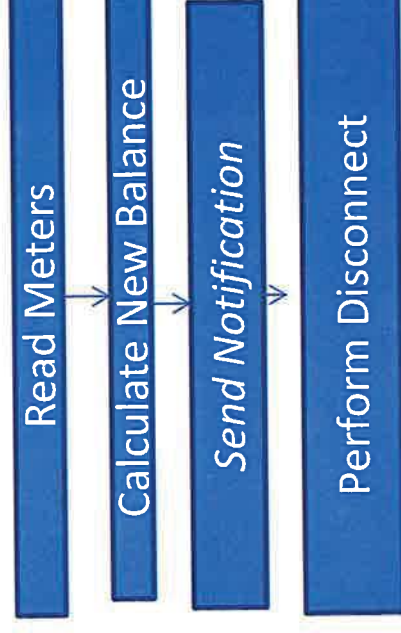
## Benefits to Customers:

- Make purchases of power when needed but on their own schedule.
- Manage their power needs in much the same manner as they do the fuel tanks in their vehicles.
- Avoid large deposits for service.
- Better understand how power is used and which appliances are using it most or at any given time.

### Disconnect Scenario Before Prepayment:



### Disconnects With Prepayment



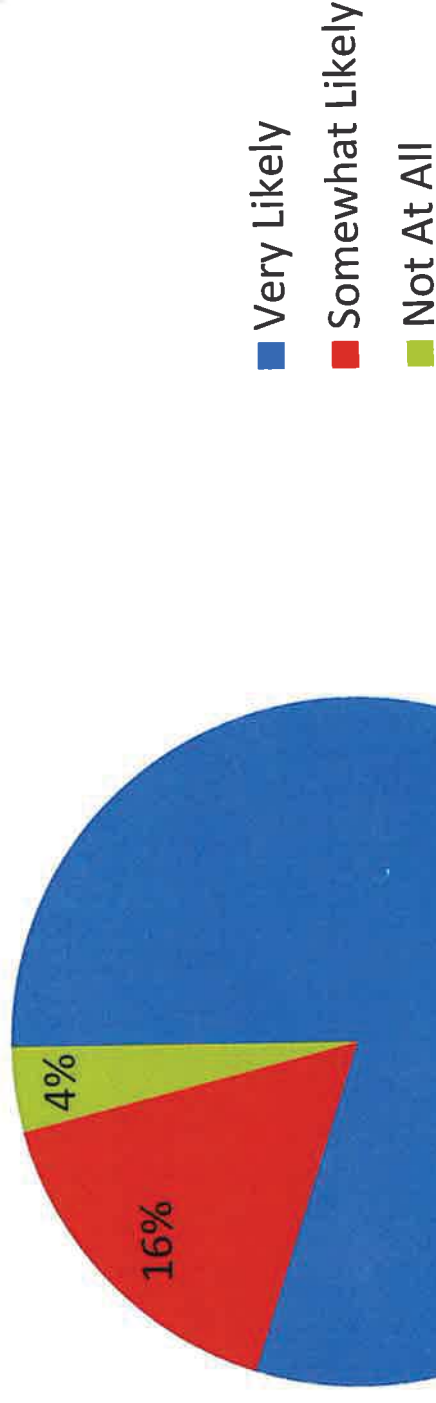
# Rural Electric Cooperatives – Prepayment Programs

## Benefits to Utilities:

- Collect past debt in a convenient and customer-acceptable way.
- Avoid incurring new debt.
- Reduce irate customer calls.
- Increase overall customer satisfaction.

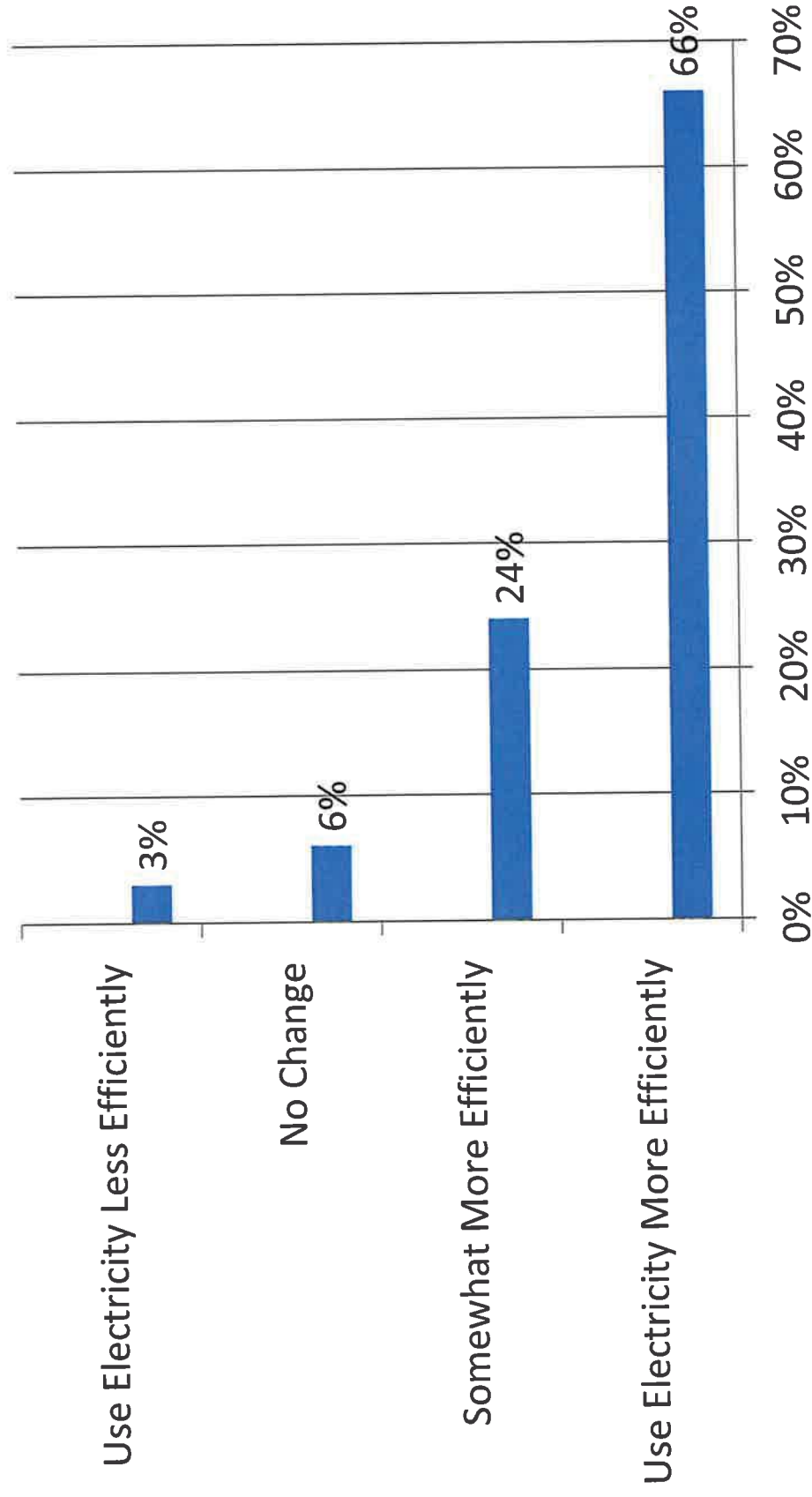
# Prepayment Programs: Customer Satisfaction

How Likely Would You Be to Recommend Prepayment?



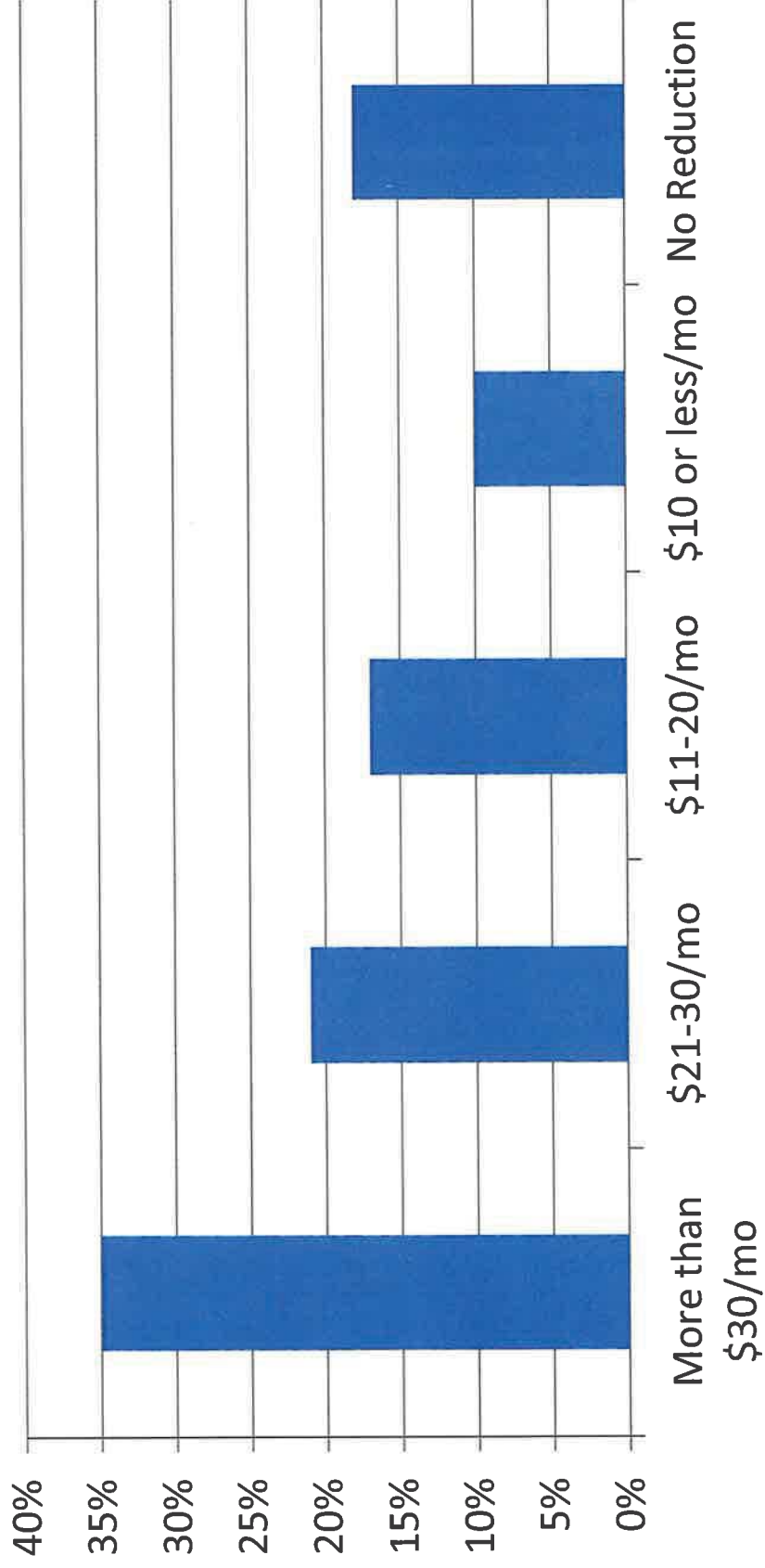


# Prepayment Programs: Energy Efficiency



# Prepayment Programs: Consumer Savings

Series 1



# Prepayment Programs: The Issue

- *How to communicate with prepaying customers without running afoul of TCPA?*
- *Wireless number churn*

# Prepayment Programs: What We Are Doing to Address the TCPA Issue

- Webinar presented on November 1, 2013.
- Information sent out to Legal and Financial communities advising caution.
- Recommendations to update membership application to include express consent.
- Recommendations to reach out to customers to request express consent.